

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§	
PETITION OF FREDERICK W.	§	No. 86, 2011
SMITH, JR., FOR A WRIT OF	§	
MANDAMUS.	§	Cr. ID No. 93007368DI

Submitted: March 4, 2011  
Decided: March 10, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 10<sup>th</sup> day of March 2011, it appears to the Court that:

(1) In August 1993, a grand jury indicted the petitioner, Frederick W. Smith, Jr., charging him with two counts of Unlawful Sexual Intercourse in the Second Degree and single counts of Unlawful Sexual Penetration in the Third Degree and Assault in the Third Degree. In November 1993, a jury convicted Smith of all four charges, and on direct appeal, the convictions were affirmed.<sup>1</sup>

(2) In the past fifteen years, Smith has repeatedly sought postconviction relief and state and federal habeas relief, all based on the same claims concerning his 1993 indictment. By Order dated September 10, 2009, affirming the dismissal of Smith's latest civil action against the State of Delaware, we concluded that "Smith's excessive and repetitious filings constitute[d] an abuse of the process of this Court," and we "enjoined [Smith] from filing any future claims concerning his 1993 convictions without first requesting leave of the Court."<sup>2</sup> Thereafter, when Smith filed an appeal from the Superior Court's January 4, 2011 denial of habeas corpus

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<sup>1</sup> *Smith v. State*, 669 A.2d 1 (Del. 1995).

<sup>2</sup> *Smith v. State*, 2009 WL 2888258 (Del. Supr.).

relief, we dismissed the appeal after applying the dictates of the September 10, 2009 Order.<sup>3</sup>

(3) On February 21, 2011, during the pendency of his appeal from the January 4, 2011 denial of habeas corpus relief, Smith filed the within petition for a writ of mandamus. Smith's petition attacks his 1993 indictment. The State has moved to dismiss the petition on the basis of the September 10, 2009 Order.

(4) The Court agrees with the State that Smith's mandamus petition is subject to dismissal. First, Smith did not request leave of the Court to file the petition as required by the September 10, 2009 Order. Second, as the State notes in its motion to dismiss, the mandamus petition mirrors the opening brief filed by Smith in his recent appeal from the January 4, 2011 denial of habeas corpus relief, which we dismissed by Order dated February 28, 2011, after applying the dictates of the September 10, 2009 Order.<sup>4</sup>

NOW, THEREFORE, IT IS ORDERED, that the State's motion to dismiss is GRANTED. The petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>3</sup> *Smith v. State*, 2011 WL 704329 (Del. Supr.).

<sup>4</sup> *Id.*